

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

YISEL DEAN, Administratrix of the  
Estate of Steven Dean, deceased, et al.,

Plaintiff,

v.

RAYTHEON CORPORATION,  
RAYTHEON AIRCRAFT HOLDINGS,  
INC., RAYTHEON AIRCRAFT CO.,  
RAYTHEON CREDIT CORPORATION,  
and COLGAN AIR, INC.,

Defendants.

Civil Action No. 05-CV-10155-PBS

**DEFENDANT COLGAN AIR, INC.'S OPPOSITION TO PLAINTIFF'S  
MOTION TO EXCLUDE MATTERS OUTSIDE OF PLEADINGS AND  
ALTERNATIVE PROTECTION MOTION FOR DISCOVERY**

Defendant Colgan Air, Inc. ("Colgan"), by counsel, respectfully submits this opposition to Plaintiff's motion to exclude matters outside of pleadings and alternative protective motion for discovery. In support thereof, Colgan states as follows:

**STATEMENT OF FACTS**

The Second Amended Complaint filed by the Plaintiff arises out an aircraft accident that occurred in Massachusetts on August 26, 2003. Plaintiff's decedent, Steven Dean, was killed in the accident. Colgan filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Plaintiff opposed the Motion to Dismiss and alleged that matters outside the pleadings should not be considered. In the alternative, the Plaintiff alleged that the Motion to Dismiss should be treated as a summary judgment motion pursuant to Fed. R. Civ. P. 56, and discovery pertaining to such a motion should be permitted. The Plaintiff has requested discovery not only with regard

to Colgan's employment of the decedent and its workers' compensation procedures, but also with regard to the parts used and repairs done on the aircraft before the accident.

### **ARGUMENT**

The Plaintiff's Motions are wholly unnecessary for the reasons set forth in Colgan's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), Memorandum, and Reply Memorandum, all of which are incorporated by reference. In sum, Massachusetts law applies in this case, and under Massachusetts law the Plaintiff cannot prevail because workers' compensation acts as an exclusive remedy and does not allow a cause of action against Colgan for exemplary damages. Even if Texas law applies the Plaintiff cannot maintain an action under Texas law. Finally, this Court may consider matters outside of the pleadings without converting the Motion to Dismiss into a summary judgment motion. In light of these reasons, further discovery is unnecessary and only would postpone the inevitable dismissal of the Plaintiff's claim against Colgan.

In the alternative, any discovery should be immediate and limited to the following: (1) Colgan's employment of the decedent, and (2) the administration of Colgan's workers' compensation procedures as they pertain to the decedent. These are the only potential areas of inquiry that relate to the issues presented in the Motion to Dismiss. Discovery on any other matters is irrelevant to the Motion to Dismiss.

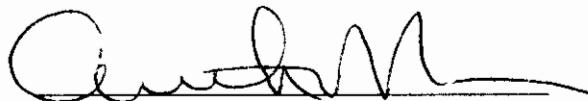
### **CONCLUSION**

WHEREFORE, based on the foregoing reasons, Colgan, by counsel, respectfully requests that this Court deny the Plaintiff's Motion to Exclude Matters Outside the Pleading, deny the Plaintiff's Alternative Protective Motion for Discovery, and award such further relief as the Court deems just and proper. In the alternative, Colgan, by counsel, respectfully requests that this Court order immediate and limited discovery on the topics of Colgan's employment of the decedent and its administration of workers' compensation procedures regarding the decedent.

Dated: July 25, 2005

COLGAN AIR, INC.

By its attorneys,

A handwritten signature in black ink, appearing to read 'Christopher A. Kenney', written over a horizontal line.

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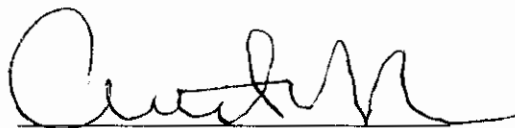
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 25th day of July, 2005 via fax and first-class U.S. mail, postage prepaid, to:

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A handwritten signature in black ink, appearing to read "Robert McConnell", written over a horizontal line.